IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.4741 of 1991

Pandurang Thakuji Zodage
Resident of Ghodegaon,Taluka
Ambegaon District Pune ..Petitioner

vs.

1. Madhukar Divakar Tapasvi
2. Sharad Divekar Tapasvi
3. Sudhakar Divakar Tapasvi
4. Smt.Vijaya Bhalchandra Tapasvi
5. Sanjaya Bhalchandra Tapasvi
6. Sangita Bhalchandra Tapasvi
   All through No.4 residing at
   Ghodagaon Taluka Ambegaon
   District Pune ..Respondents

Shri Vivek Salunke i/b Shri Prafulla Shah for petitioners.

CORAM: S.B.MHASE J.
7th March, 2006

ORAL JUDGMENT:

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India challenging the order passed by the Maharashtra Revenue Tribunal in Revision Application No.MRT-P-X-I-11/90 (Ten.Case No.B.327/90) decided on 4th July, 1991. The petitioner has filed the application bearing No.740 of 1970 before Tahsildar, Ambegaon, District Pune under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1947 for a declaration

that the petitioner is a tenant of Survey No.1136/5 admeasuring 11 Ares assessed at Rs.0-91 paise contending that since last 25 years the petitioner is cultivating the said land and, therefore, he is deemed tenant of the said land. The said application was decided by Tahsildar, Ambegaon on 14th April, 1989. Tahsildar Ambegaon rejected the said application declaring that the petitioner is not the tenant of the said land. Being aggrieved by the said judgment and order the petitioner preferred Tenancy Appeal No.TNC/A/11 of 1989 before the Sub Divisional Officer, Junnar, Sub Division Khed (Pune). The said appeal was decided by order and judgment dated 18th August, 1990. The Sub Divisional Officer, Junnar Sub Division, was pleased to dismiss the said appeal. Being aggrieved and dissatisfied by the said order of the Sub Divisional Officer, petitioner preferred Revision Application under sec.76 of the Bombay Tenancy and Agricultural Lands Act, 1947 bearing No.MRT-P-X-11/90 which was decided by M.R.T. on 4th July, 1991. M.R.T. was also pleased to dismiss the said revision. Thus, consistently the Revenue and Tenancy authorities have held that the petitioner is

not the tenant of the said land.

2. Learned Counsel for the petitioner submitted that the land is being cultivated by the petitioner for the last 20 years and, therefore, under sec.4 he is deemed tenant of the said land. Learned Counsel also relied upon the judgment of this Court in the matter of Babu Hari Patil and another Vs. Rama Ananda Jadhav (since deceased) his heirs and others reported in 2005(3) LJSOFT 52. None appears for respondents though served.

3. In the light of the submissions I have gone through the record. It has transpired that the petitioner himself has stated that since last 20 years he is cultivating the said land. However, he is cultivating the said land on half half share basis, that means according to him, half of the expenses of cultivation were borne by the respondent and half were shared by the petitioner. He further stated that the crop used to be divided 50% between them. Thus looking to the submissions of the petitioner himself coupled with his application it becomes abundantly clear that the petitioner was cultivating the

said land as a partner. He was not cultivating the said land as a tenant and the ingredients of section 4B are not satisfied. It is pertinent to note that other rights column of 7/12 extract shows the names of Shivram Savlerai Mali and Narayan Bhimaji Ghodekar as tenants of the said land. If the land was cultivated by the present petitioner for 20 years at some point of time village Talathi could have made the entry of cultivation of the said land in favour of the petitioner. However, not a single entry was effected in favour of the petitioner showing that the petitioner cultivated the said land. Under the provisions of Maharashtra Land Revenue Code Village Talathi is duty bound to carry on crop inspection twice a year. Therefore, for 20 years there is not a single crop inspection entry in favour of petitioner, then the case made out by the petitioner appears to be incorrect one. In the backdrop of these circumstances there is a submission of the landlord that the petitioner had no concern whatsoever with the said land. Apart from that there was suit filed by the landlord as against the petitioner bearing civil suit no.179 of 1988 in which even the injunction

was granted against the petitioner. In the said suit the landlord has claimed that the petitioner is trying to trespass upon the land. All this material has been considered by the Tahsildar and Sub Divisional Officer and even by the Maharashtra Revenue Tribunal and thereafter these authorities have come to the conclusion that there is no relationship of tenant and landlord between the petitioner and the respondents. I find no fault with the finding recorded by the authorities below. The case which is relied upon by the learned Counsel for the petitioner is of no help to the petitioner. The writ petition is thus without any merit and, therefore, the same is dismissed. Rule discharged. No order as to costs.

(S.B.MHASE J.)